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CHARLES ELMORE

Nos. 127, 275, 350, 351, and 352

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNIVERSAL BATTERY COMPANY, PETITIONER
v.
THE UNITED STATES

VESTA BATTERY CORPORATION, PETITIONER
v.
THE UNITED STATES

THE BARRICK MANUFACTURING COMPANY, PETITIONER
v.
THE UNITED STATES

F. W. STEWART MANUFACTURING CORPORATION, PETITIONER
v.
THE UNITED STATES

GEMCO MANUFACTURING COMPANY, PETITIONER
v.
THE UNITED STATES

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Claims are not yet officially reported but appear in the records of the various cases as follows:

No. 127. Universal Battery Company. (R. 17–25.)

No. 275. Vesta Battery Corporation. (R. 19–28.)

No. 350. Bassick Manufacturing Company. (R. 9–14.)

No. 351. F. W. Stewart Manufacturing Corporation. (R. 11–13.)

No. 352. Gemco Manufacturing Company. (R. 8–9.)

JURISDICTION

The judgments by the Court of Claims were entered and writs of certiorari were granted as follows:

No. 127. Universal Battery Company; judgment entered December 3, 1928 (R. 25–26); motion for new trial overruled March 11, 1929 (R. 26); petition for certiorari filed June 4, 1929 (R. 26), and granted October 14, 1929.

No. 275. Vesta Battery Corporation; judgment entered May 6, 1929 (R. 28); petition for certiorari filed July 30, 1929 (R. 28), and granted October 21, 1929.

No. 350. Bassick Manufacturing Company; judgment entered June 10, 1929 (R. 14); petition for certiorari filed August 29, 1929 (R. 15); certiorari granted November 4, 1929.

No. 351. F. W. Stewart Manufacturing Corporation; judgment entered March 11, 1929 (R. 13); motion for new trial overruled June 3, 1929 (R. 13); petition for certiorari filed August 29, 1929 (R. 14), and granted November 4, 1929.

No. 352. Gemco Manufacturing Company; judgment entered March 11, 1929 (R. 9); motion for new trial overruled June 10, 1929 (R. 10); petition for certiorari filed August 29, 1929 (R. 10), and granted November 4, 1929.

The writ of certiorari in each of the above cases was granted by this Court under the provisions of Section 3 (b) of the Act of February 13, 1925, and the Court has ordered that all of these cases be argued as one case.

QUESTION PRESENTED

Do the findings of the Court of Claims show that the articles involved in the several suits, which were manufactured and sold by petitioners, were not "parts or accessories" for automobile trucks, automobile wagons, other automobiles or motor cycles within the meaning of Section 900 (3), p. 22, *infra*, of the Revenue Acts of 1918 and 1921, and of the regulations of the Commissioner of Internal Revenue made by authority of said Acts?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in an appendix to this brief.

STATEMENT

All of these cases were brought against the United States to recover Federal excise taxes assessed and collected under the provisions of Section

900 (3) of the Revenue Acts of 1918 and/or 1921. In all the Court of Claims rendered judgment sustaining the tax.

No. 127. Universal Battery Company

The following is an epitome of the findings of the Court of Claims:

The petitioner has since 1913 manufactured and sold storage batteries and storage battery parts. (R. 17.) In constructing a storage battery, a top is put on the container or jar and sealed over with sealing wax, leaving a terminal post exposed. The function of a storage battery in an internal-combustion engine is to furnish, in connection with an ignition system, the spark to set afire the mixture of gas. In an automobile the battery may also be used to furnish current to light the car and start the engine. (R. 22.) For the past twenty years storage batteries such as are manufactured by petitioner have been used in electric automobiles, gasoline-propelled automobiles, motor boats, farm tractors, farm-lighting plants, airplanes, for propelling mining cars, for propelling small trucks such as baggage trucks, for summer-camp lighting, for door bells, in railway switches and for wireless telegraphy, and for other purposes where a dependable source of power is needed; also for radios, telephones, telegraph, and fire alarms, and electroplating. Petitioner sold its batteries to garage men, accessory dealers, radio dealers, jobbers, and

distributors, and had no means of knowing at the time of sale for what purpose they would be used. (R. 23.)

Petitioner manufactured several types of batteries. Any one of them could be used in some automobile. No battery was made to fit any particular automobile unless specially ordered. The different types have order numbers. The arrangement of the cells of some types of petitioner's batteries may limit them to a particular make of automobile, but would not limit them for other uses. Almost all of the batteries left the factory with straight terminal posts without terminals. (R. 24.)

No. 275. Vesta Battery Corporation

In the findings of fact, the composition and construction of a storage battery are described and the various uses that may be made of storage batteries are enumerated, substantially as in the case of *Universal Storage Battery, supra.* (R. 26–27.) Petitioner sold batteries principally to dealers and jobbers who were conducting garages and service stations, and the batteries taxed "were of the type especially suitable for use on automobiles as replacements for the batteries forming a part of the original equipment of such cars and were not adapted to any other primary purpose or use." Catalogues issued advertised the batteries for use in automobiles and announced "A Vesta Battery for every car," and purchasers were requested in

ordering to specify the kind of automobile for which the battery was required. Any one of the types manufactured by petitioner could be used on some automobile. (R. 27–28.)

No. 350. Bassick Manufacturing Company

In this case the taxes were assessed and paid on the sale of gascolators. (R. 8.) A gascolator is a device designed to be placed between the fuel tank and the carburetor of any internal combustion motor for the purpose of taking out dirt, water, grit, or any foreign matter from the gasoline before it gets to the carburetor. They were sold by petitioner, during the period involved, to aeroplane, farm implement, automobile and industrial machinery manufacturers. They were adaptable for use on internal combustion engines used for driving tractors, airplanes, industrial machinery, motor boats, marine boats, and automobiles. (R. 10.) In November, 1926 (after the period of taxation in question), petitioner issued a catalogue advertising a "Ford gascolator," a "Franklin gascolator," and a special "Buick gascolator." It does not appear what, if any, part of the taxes sought to be recovered herein was paid for gascolators sold to automobile manufacturers or for uses other than for automobiles. (R. 11.)

No. 351. F. W. Stewart Manufacturing Corporation

The taxes were assessed and paid on the sale of parts for automobile speedometers, particularly

speedometer gears, drive chains, flexible shafts, and flexible housings for such shafts. (R. 11.) These articles "were especially designed, manufactured, and sold for use on or in connection with automobiles and are not adapted to any other purpose or use." (R. 11, 12.)

No. 352. Gemco Manufacturing Company

The taxes were assessed and paid on the sale of bumpers for automobiles, and bars, brackets, and fittings for use as replacement parts of such bumpers. Said articles were "especially designed, manufactured, and sold for use on or in connection with automobiles, and are not adapted for any other purpose or use." (R. 8.)

SUMMARY OF ARGUMENT

The assessment of the Commissioner is *prima facie* evidence of the correctness of the tax. The burden of showing that the tax was illegally collected was upon petitioners. No petitioner can recover unless some finding of the Court of Claims would support a judgment in its favor.

Two phases of the general question are presented. In Nos. 127, 275, and 350, the question is whether the findings show the article involved is not taxable, within a proper construction of Section 900 (3) of the Revenue Acts of 1918 and 1921. The other phase is whether a part of an accessory or of a part for an automobile is within the scope of the provision imposing the tax.

The tax is of the nature of a consumption tax. In the case of an article that is commonly used on automobiles but is also used for other purposes, the application of the tax depends upon the use to which the article is put, as determined by the design and the purpose for which it is advertised and sold. The statute has been so construed by the Treasury Department in Regulations 47, Arts. 15 and 16, during a period of six years. In this time the law was reenacted twice without material change, so that the Treasury Department construction has been impliedly approved by Congress. This construction is reasonable, and has been adopted by the Court of Claims. Rules of construction may not be carried so far as to reduce a statute to empty declarations.

Parts of accessories are taxable, since every element in the aggregation or composition or amalgamation of an article is a part of it.

Applying these principles to the findings in each of the present cases, the judgment of the Court of Claims in each case should be affirmed.

ARGUMENT

Paragraph (3) of Section 900, p. 22, *infra,* imposes a tax on the sale of parts or accessories for any of the articles enumerated in paragraphs (1) or (2), automobile trucks, automobile wagons, other automobiles, and motor cycles, except tractors, when sold to others than a manufacturer

or producer. The question in each of these cases is whether the findings of the Court of Claims show that the article involved was not a part or accessory for one of the articles mentioned, within the meaning of said section.

The assessment of the Commissioner is *prima facie* evidence of its correctness. See *Wickwire* v. *Reinecke,* 275 U. S. 101, 105; *United States* v. *Rindskopf,* 105 U. S. 418, 422. The burden of showing that any tax was illegally collected was upon petitioner. *Reinecke* v. *Spaulding,* decided by the United States Supreme Court January 6, 1930, No. 59, October term, 1929 (not yet reported); *Botany Mills* v. *United States,* 278 U. S. 282, 289–290; *United States* v. *Mitchell,* 271 U. S. 9, 12; *United States* v. *Anderson,* 269 U. S. 422, 443. In a case coming from the Court of Claims we submit that the petitioner can not recover unless some finding of the Court of Claims would require a judgment in his favor. See *Botany Worsted Mills* v. *United States,* 278 U. S. 282, 290, *supra; Reinecke* v. *Gardner,* 277 U. S. 239, 245. We contend that no finding of the Court of Claims in any of these cases requires a judgment in favor of the petitioner.

Two phases of the general question are involved in the present cases. Two of them relate to taxes assessed and collected on sales of storage batteries, No. 127, *Universal Battery Co.;* No. 275, *Vesta Battery Corporation.* One relates to taxes on

sales of an article called a gascolator, No. 350, *Bassick Manufacturing Co.* The question in each of these cases is whether the facts show that the article is within the scope of the language of the statute, on principles which will be referred to below.

The other phase of the question is presented by No. 351, *F. W. Stewart Manufacturing Corporation,* and No. 352, *Gemco Manufacturing Co.* The former relates to sales of parts for automobile speedometers; the latter to sales of parts of bumpers. Speedometers and bumpers are conceded to be accessories for automobiles, but it is contended by the petitioner in each of these two cases that parts for speedometers and parts for bumpers are not parts for automobiles, and that the statute does not cover parts for accessories.

The provisions imposing this tax are a part of Title IX of the Revenue Act of 1918, and of Title IX of the Revenue Act of 1921. An examination of this Title reveals an intention of Congress to levy taxes on the sale of articles that are not necessities, or on articles which are devoted to particular uses. They are consumption taxes. They were a part of the general program for raising revenue to defray the expenses of the Government in the war period. In taxing automobiles, tractors are expressly excepted. Parts or accessories for motor vehicles of the kinds enumerated are taxed, but parts or accessories for tractors are left free from tax. There are many articles which are component parts or

accessories of automobiles which could also be used as parts for tractors or for other purposes, such as for airplanes, motor boats, motor fire engines, and stationary engines. It is this situation which has given rise to much of the controversy over the application of the section. But it seems plain that so far as such articles are concerned, it was the intention of Congress that the *use* to which an article was to be put was to determine its taxability. It is not reasonable to suppose that no tax was to be levied on the sale of a storage battery (which is an indispensable part of an automobile) when sold for use in an automobile, merely because its use is not limited to automobiles.

To enumerate the various parts of or accessories for automobiles would have been well-nigh impossible and practically futile, as changes and improvements are being made constantly and new or different accessories are being devised. Many of the parts and accessories of motor cars are well-known devices which were in use before the advent of automobiles, and represent long-known principles applied particularly in automobile construction. Therefore, Congress used generic terms with the intention that the provision would be construed to effectuate its purpose.

The Treasury Department promulgated regulations which were designed to give effect to the intention of Congress and to resolve the difficulties in administering the law. (These regulations ap-

pear on pp. 23–24, *infra*.) We submit that these regulations reasonably interpret and apply the law. They were first promulgated May 1, 1919, and were continued without substantial change until the repeal of the provisions by the Revenue Act of 1926, c. 27, 44 Stat. 9. During this time the Revenue Acts of 1921 and 1924 were enacted without material change. The interpretation of the Treasury Department has thus been impliedly recognized and approved by Congress. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, 235; *National Lead Co.* v. *United States*, 252 U. S. 140, 146.

Under the regulations as construed by the Court of Claims the following principles have been evolved:

(1) If an article is designed or sold primarily for use on automobiles, it is taxable.

(2) If an article is not designed or sold primarily for use on automobiles, it is not taxable.

(3) Even though an article was designed for use on automobiles, any of such articles proved to have been used for other purposes are not taxed.

(4) If an article is designed primarily for use on automobiles, the fact that it is susceptible of other uses does not relieve it of the tax.

(5) Component parts of an article which is taxable under the definitions of "parts or accessories" are taxable under the definition when sold separately if they have reached such a stage of manufacture that they are primarily adapted for use as a component part of such article.

(6) When an article is one that is commonly used on automobiles, and the tax has been collected thereon, it may not be recovered unless the taxpayer establishes that the article was not designed or sold primarily for use on automobiles.

Regulations No. 47, Arts. 15 and 16; *Cole Storage Battery Co.* v. *United States,* 65 C. Cls. 164, certiorari denied 278 U. S. 641; *Walker Manufacturing Co.* v. *United States,* 65 C. Cls. 394; *Advance Automobile Accessories Corp.* v. *United States,* 66 C. Cls. 304; *Atwater Kent Mfg. Co.* v. *United States,* 62 C. Cls. 419; *Borg & Beck Co.* v. *United States* (C. Cls.), decided March 11, 1929, not yet reported.

The instant cases are the first under this provision of the Revenue Act to come before this Court. A somewhat similar question has arisen with respect to the classification of articles under the Tariff Acts. *Chew Hing Lung* v. *Wise, Collector,* 176 U. S. 156; *Magone* v. *Wiederer,* 159 U. S. 555; *Sonn* v. *Magone,* 159 U. S. 417; *Magone* v. *Heller,* 150 U. S. 70. These cases lay down the rule that the commercial designation is the important one to be ascertained in settling the meaning and application of the tariff laws, but if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must be had to the common designation. They also state that the classification is to be determined from the "chief use," which is to be ascertained by that which was commonly, practically, and generally

done, and is not to be overthrown by an occasional exception. We submit that these cases do not support the construction of the Acts here involved for which the petitioner contends. Moreover, we contend that those cases are not controlling in construing Section 900, *infra*. See *Forged Steel Wheel Co.* v. *Lewellyn*, 251 U. S. 511, 515. They deal with a different law, enacted with a different purpose in mind, viz., the protection of American industries. *Chew Hing Lung* v. *Wise, Collector, supra*, p. 163. As stated above, the tax here in question is of the nature of a consumption tax. Furthermore, those cases generally deal with articles *eo nomine*, while here we are considering generic terms, limited by a specification of the use, viz., for automobiles and motor cycles.

In *Philadelphia Storage Battery Co.* v. *Lederer*, 21 F. (2d) 320 (relied upon by counsel for the Universal Battery Company), the United States District Court for the Eastern District of Pennsylvania passed upon the application of the tax to sales of storage batteries. The District Court found (p. 323) that there is no such thing as an "automobile storage battery" or "storage battery for automobiles" in the nomenclature of the trade and no article or thing so known; that what were sold were "storage batteries," and these are not taxed by the Act. We submit that that court construed the section incorrectly. No parts or accessories are specifically named by Section 900, except tires and

inner tubes. Storage batteries are now an essential and indispensable part of an automobile. We submit that if a storage battery is designed for use in an automobile, and is sold as suitable and intended for such use, the sale is taxable.

Unless the law is so applied, there are but few parts or accessories of automobiles that would be reached by this tax. Almost every part of the motor of an automobile could also be a part of any internal combustion engine used for another purpose, such as tractors, motor boats, and pumps. It was the undoubted intention of Congress to tax the sale of all articles that were to be used as parts or accessories of automobiles. The construction contended for by the petitioners would largely nullify the Act. Rules of construction can not be carried to the length of reducing a statute to empty declarations. *Carbon Steel Co.* v. *Lewellyn* (C. C. A. 3d), 258 Fed. 533; 251 U. S. 501; *Worth Bros. Co.* v. *Lederer,* 251 U. S. 507.

On the question of the application of the tax to parts of parts or parts of accessories, this Court has held in construing another law that every element in the aggregation or composition or amalgamation of an article was a part of it. *Worth Bros. Co.* v. *Lederer, supra; Forged Steel Wheel Co.* v. *Lewellyn,* 251 U. S. 511. Those cases arose under the Munitions Tax Act of 1916, c. 463, 39 Stat. 756, 781, which imposed a tax upon profits received from the manufacture of certain articles "or any part of any of the articles mentioned." The contention of

the petitioners in each of those cases was much the same as the contentions of the petitioners here in the *Gemco* and *Stewart cases,* Nos. 351 and 352. They contended that steel forgings for shell bodies were not any part of a shell within the meaning of the law; that the words "any part" meant a substantially finished part, a part which has a relation "to the whole structure and to the purpose it is intended to subserve." In rejecting the contention, this Court said that Congress did not intend to subject its legislation to such artificialties and make it depend upon distinctions so refined. *Worth Bros. Co.* v. *Lederer, supra* (pp. 509–510).

We consequently submit that the regulation which provides—

> Component parts of articles taxable under the definition of "parts" are taxable when sold separately if they have reached such a stage of manufacture that they are primarily adapted for use as component parts—

was proper (p. 25, *infra*).

The facts in each of the present cases will be considered in the light of the principles referred to above.

No. 127. Universal Battery Company

In this case, the facts show that the petitioner was a manufacturer of storage batteries; that such batteries have many uses, including automobiles, trucks, and motor cycles; and that storage batteries are a common and usual part of an automobile. The tax was upheld by the Court of

Claims on the authority of *Cole Storage Battery Co., supra.* The findings in the present case are not as complete as the findings in the *Cole Storage Battery Co. case,* where it appeared that the batteries manufactured and sold were designed for the special purpose of being used to replace component parts of automobiles. The findings here do not negative the existence of the additional facts found in the *Cole Storage Battery case.* It does appear in the present case that petitioner manufactured several types of batteries, any one of which could be used in some automobile. No battery was made to fit any particular automobile unless specially ordered, but the different types have order numbers. (R. 24.)

The burden of establishing the invalidity of the tax was on petitioner. The Court of Claims has not found that the storage batteries were not "for" automobiles, nor does it follow as a matter of law from the facts found that the storage batteries sold were not for automobiles. In this situation we submit the findings do not require a reversal of the decision of the Court of Claims, and that the determination of the Commissioner of Internal Revenue and the judgment of the Court of Claims should be sustained.

In the event that this Court feels the findings now made are not sufficient to sustain the judgment below, we request consideration of the Government's motion to remand the case to the Court of Claims for further findings in view of the meagerness of

the findings, of the peculiar circumstances here existing, and of the fact that the Government does not seek to change the existing findings but merely to add matters upon which the Court of Claims has made no findings. A detailed explanation of the situation and argument in support of the motion is printed with the motion.

No. 275. Vesta Battery Corporation

In this case the findings show the construction of storage batteries and describe their various uses as in the *Universal case*. But here the findings go further than in the *Universal case* and show that the batteries taxed "were of the type especially suitable for use on automobiles as replacements for the batteries forming a part of the original equipment of such cars and were not adapted to any other primary purpose or use." The findings also show that the batteries in question were advertised for automobile uses. (R. 27.) We submit that it follows that the batteries are parts or accessories for automobiles within the meaning of the statute. If an article, which was especially suitable for such use, and was not adapted to any other primary purpose, and was extensively advertised for such use, is not a part for an automobile, it is hard to conceive of any article that could be classed as a part for an automobile until it became actually attached thereto. It is submitted that to deny the tax on such articles would be to render the provisions of the statute futile.

No. 350. Bassick Manufacturing Company

This case involves the gasoline strainers called "gascolators." While the findings show that the articles had uses other than on automobiles, trucks, and motor cycles, they clearly show that the articles were designed for internal-combustion engines. Naturally the principal market therefor would be automobiles, trucks, and motor cycles. The findings show that advertisements after the period of taxation in question specifically advertised these articles for automobile uses. (R. 11.) The advertisements were published about eight months after the date of the taxing period and are competent as showing the intent of the manufacturer and seller with reference to the uses intended.

The findings show that there was a difference in the gascolators sold by petitioner in the size of the "adapter," which is a device to connect the gascolator to the fuel pipe. Their interchangeability on internal-combustion engines depended on the sizes of the fuel pipe and adapter. It does not appear what quantities, if any, were sold with adapters suitable for other uses than on automobile engines.

The findings in this case are meager, and a careful scrutiny of them discloses that the Court of Claims has not stated that the petitioner sold any gascolators for use as parts of automobiles to any persons other than manufacturers or producers of automobiles. A sale to a manufacturer or producer

of an automobile is not taxable under Section 900 (1) or (2), and Subparagraph (3) of this section expressly excepts sales to manufacturers or producers of automobiles. But the fact that the court found for the defendant leads to the conclusion that it intended to state that large numbers of sales were made to persons (other than manufacturers) who might normally be expected to sell gascolators for use on automobiles. Moreover, there is no express finding that such sales were not made.

If this Court should feel that the omission to make findings in regard to this matter is important, we request consideration of our motion to remand the case to the Court of Claims for further findings.

No. 351. F. W. Stewart Manufacturing Corporation

This suit involved taxes on parts for automobile speedometers, and the findings show that they were especially designed, manufactured, and sold for use on or in connection with automobiles and were not adapted for any other purpose or use. This finding, we urge, is conclusive as to the taxability of the articles involved. We submit that these articles are taxable on the principle laid down in *Worth Bros. Co.* v. *Lederer, supra; Forged Steel Wheel Co.* v. *Lewellyn, supra;* under the express provisions of Article 16 of Regulations 47.

No. 352. Gemco Manufacturing Company

This suit involved taxes on bumpers for automobiles, and bars, brackets, and fittings for use as

replacement parts of such bumpers. Here, as in the *Stewart case,* the court found that the articles were especially designed, manufactured, and sold for use on or in connection with automobiles, and are not adapted for any other purpose or use. Again we submit that this finding conclusively shows the correctness of the tax, and that the same principles apply as in No. 351.

CONCLUSION

Each case turns upon its own facts. The Court of Claims has determined the cases upon the facts found to exist in each case, and we contend that there is no finding entitling any of the petitioners to recover, and that the judgments should be affirmed.

Respectfully submitted.

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JANUARY, 1930.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 900 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1122, so far as applicable provides:

> That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—
>
> (1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;
>
> (2) Other automobiles and motor cycles, (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;
>
> (3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum;
>
> * * * * *

Section 900 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 291, in all material respects follows Section 900 of the Act of 1918.

The pertinent provisions of Regulations No. 47, promulgated May 1, 1919, are as follows:

ART. 15. *Definition of parts.*—A "part" for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adaptable only for use as a component part of such vehicle. Mere stock or commercial commodities such as bolts, nuts, washers, screws, though used as components for such vehicles, are not "parts" within the meaning of subsection (3) of section 900. Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adaptable for use as component parts of such vehicles. Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adaptable for use as such a component part. * * *

ART. 16. *Definition of accessories.*—An "accessory" for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed to be attached to or used in connection with such vehicle to add to its utility, and which is primarily adaptable for use in connection with such vehicle, whether or not essential to its operation. The term "accessories" includes, for example, horns, speedometers, self-starters, spot-lights, shock absorbers, tire pumps, pressure gauges, and hydrometers. * * * If any doubt * * * exists as to the special adaptability of an article the fact of

its sale by the manufacturer to be used with an automobile or to an automobile accessories dealer will determine its taxability. A wrench or other tool of a kind sold in hardware stores for general purposes is not subject to the tax, but a wrench or other tool of special design or construction primarily adapted to be used in connection with automobiles will be subject to the tax. Robes, goggles, and lunch kits are not subject to the tax. * * *

The parts quoted of the above articles were continued without material change in revised editions of Regulations 47, promulgated December 27, 1920, and January 6, 1922.

In Regulations No. 47 (Revised August, 1924), promulgated August 29, 1924, the provisions read as follows:

ART. 16. *Parts or accessories—Definition of parts.*—A "part" for an automobile truck, automobile wagon, or other automobile chassis or body, or motor cycle, is any article designed or manufactured for the special purpose of being used as, or to improve, repair, or replace, a component part of any such vehicle, or article, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, or which is primarily adapted only for use as a component part of such vehicle or article.

Definition of accessories.—An "accessory" for an automobile truck, automobile wagon, or other automobile chassis or body, or motor cycle, is any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, or any article which is primarily

adapted for use in connection with such vehicle or article whether or not essential to its operation or use. * * *

Articles which have a general commercial use and which are not especially designed or peculiarly adapted for use in connection with automobile truck, automobile wagon, or other automobile chassis or bodies, or motor cycles, are not subject to tax as "parts or accessories." Thus a wrench or other tool of a kind ordinarily sold in hardware stores for general purposes is not subject to tax when sold separately; but if incorporated in an automobile tool kit, designed, intended, advertised, or held out for use on an automobile, as distinguished from garage or shop equipment, is taxable as a part of the assembled kit. A wrench or other tool of special design or construction, primarily adaptable for use in connection with automobiles, and which is intended to be carried in the car, is taxable.

Mere stock or commercial commodities such as bolts, nuts, washers, screws, etc., though used as components for taxable articles, are not "parts" within the meaning of subdivision (3) when sold separately. Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles.

Component parts of articles taxable under the definition of "parts" are taxable when sold separately if they have reached such a stage of manufacture that they are primarily adapted for use as component parts. * * *

* * * * *

Parts or accessories for automobile trucks, automobile wagons, other automobiles, or motor cycles, primarily adapted for use on or in connection therewith, are taxable when sold by the manufacturer thereof, regardless of the purpose for which used.

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(Insert to be added as Appendix in brief for the United States in Nos. 127, 275, 350, 351, and 352, *Universal Battery Company, Petitioner,* v. *The United States* and other cases consolidated with it for hearing.)

The following are extracts from Regulations 47 promulgated August 29, 1924:

> ART. 15. *Tires, inner tubes, parts, and accessories sold to manufacturers.*—The tax of 2½ per cent applies to *all* tires, inner tubes, parts, or accessories sold separately by the manufacturer thereof, unless the sale is made to a manufacturer who furnishes a certificate in the form provided in this article for the exemption of such sale. The above applies regardless of the fact that tires, inner tubes, parts, or accessories may be sold for use on chassis selling for $1,000 or less or bodies selling for $200 or less.
>
> The words "tires, inner tubes, parts, or accessories" shall be understood to embrace only such tires, inner tubes, parts, or accessories as have reached such a stage of manufacture that they constitute articles commonly or commercially known as "tires, inner tubes, parts, or accessories," and shall not be understood to embrace raw materials used in the manufacture of such articles.
>
> Unvulcanized sheet rubber, liquid rubber vulcanizing cement, and friction fabrics are considered raw materials, and are exempt from tax.

Any article which has reached a state of manufacture wherein it is in itself a component part or accessory, and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer, is subject to tax as a "part or accessory."

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ART. 16. * * *

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Definition of accessories. * * *

As the rate of taxation is the same on both parts and accessories, it is not necessary to differentiate with respect to certain articles that may be classed as either one or the other.

The following may be mentioned as examples of "parts or accessories": Automobile tops, back and side curtains, wheels, engines, springs, axles, axle shafts, radiators, horns, speedometers, self-starters, spot lights, shock absorbers, bumpers, tire pumps, pressure gauges, jacks, etc. When sold separately a side car is taxable as a "part."

Somewhat similar provisions occur in some of the earlier regulations referred to above.

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